

CONSOVOY MCCARTHY PLLC

William S. Consovoy *
E-Mail: will@consovoymccarthy.com
Bryan K. Weir (CA Bar. #310964)
E-mail: bryan@consovoymccarthy.com
Cameron T. Norris*
E-mail: cam@consovoymccarthy.com
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
Telephone: (703) 243-9423
Counsel for [Proposed] Intervenor-Defendants
Speech First, Inc. and Independent Women’s Law Center

COOPER & KIRK, PLLC

Charles J. Cooper*
E-mail: ccooper@cooperkirk.com
Brian W. Barnes*
E-mail: bbarnes@cooperkirk.com
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
(202) 220-9600
Counsel for [Proposed] Intervenor-Defendants
Foundation for Individual Rights in Education
*Pro Hac Vice

Additional Counsel for Proposed Intervenors Listed on Signature Page

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

The Women’s Student Union,

Plaintiff,

v.

U.S. Department of Education,

Defendant,

Foundation for Individual Rights in
Education, Independent Women’s Law
Center, Speech First, Inc.,

*[Proposed] Intervenor-
Defendants*

Case No. 3:21-cv-01626-EMC

**[Proposed] INTERVENOR-DEFENDANT,
FOUNDATION FOR INDIVIDUAL RIGHTS
IN EDUCATION’S ANSWER**

Judge: Hon. Edward M. Chen

1 Proposed Intervenors submit the following answer to Plaintiff's Amended complaint, Doc.
2 78. Unless expressly admitted below, Proposed Intervenors deny the factual allegations in the
3 complaint. Proposed Intervenors respond to the numbered allegations of the complaint as follows:

- 4 1. Proposed Intervenors lack sufficient information to admit or deny the allegations in
5 this paragraph.
- 6 2. Proposed Intervenors lack sufficient information to admit or deny the allegations in
7 this paragraph.
- 8 3. Proposed Intervenors lack sufficient information to admit or deny the allegations in
9 this paragraph.
- 10 4. Proposed Intervenors lack sufficient information to admit or deny the allegations in
11 this paragraph.
- 12 5. Proposed Intervenors lack sufficient information to admit or deny the allegations in
13 this paragraph.
- 14 6. The cited legal authority speaks for itself. Proposed Intervenors lack sufficient
15 information to admit or deny the remaining allegations in this paragraph.
- 16 7. Admitted.
- 17 8. Proposed Intervenors admit that Betsy DeVos led the Department of Education in
18 2020 and that in that year the Department promulgated regulations to effectuate Title
19 IX. This paragraph otherwise consists of legal conclusions that do not require a
20 response.
- 21 9. This paragraph contains legal conclusions that do not require a response. The
22 Department's Regulations speak for themselves, and to the extent this paragraph
23 includes allegations that are deemed factual, they are denied.
- 24 10. This paragraph contains legal conclusions that do not require a response. The
25 Department's Regulations speak for themselves, and to the extent this paragraph
26 includes allegations that are deemed factual, they are denied.
- 27 11. This paragraph contains legal conclusions that do not require a response. The
28 Department's Regulations speak for themselves, and to the extent this paragraph

- 1 includes allegations that are deemed factual, they are denied.
- 2 12. This paragraph contains legal conclusions that do not require a response. The
3 Department's Regulations speak for themselves, and to the extent this paragraph
4 includes allegations that are deemed factual, they are denied.
- 5 13. The Regulations speak for themselves. Proposed Intervenors admit that the
6 Regulations supersede earlier policies. Proposed Intervenors lack sufficient
7 information to admit or deny any remaining allegations in this paragraph.
- 8 14. The Regulations speak for themselves, and Proposed Intervenors deny Plaintiff's
9 characterizations of those regulations. Proposed Intervenors lack sufficient
10 information to admit or deny any remaining allegations in this paragraph.
- 11 15. This paragraph consists of legal conclusions that do not require a response. Proposed
12 Intervenors lack sufficient information to admit or deny any remaining allegations in
13 this paragraph.
- 14 16. Proposed Intervenors lack sufficient information to respond to the allegations about
15 the identity, purpose, and activities of Plaintiff The Women's Student Union.
- 16 17. Admitted.
- 17 18. This paragraph consists of legal conclusions that do not require a response.
- 18 19. This paragraph consists of legal conclusions that do not require a response.
- 19 20. This paragraph consists of legal conclusions that do not require a response.
- 20 21. The legal authority cited in this paragraph speaks for itself. This paragraph contains
21 legal conclusions that do not require a response.
- 22 22. Proposed Intervenors admit that Title IX has been the law for nearly 50 years.
23 Proposed Intervenors lack sufficient information to admit or deny the remaining
24 allegations in this paragraph.
- 25 23. The Supreme Court decisions cited in this paragraph speak for themselves. This
26 paragraph contains legal conclusions that do not require a response.
- 27 24. Proposed Intervenors admit that Title IX is enforced by federal agencies. The statutes
28 cited in this paragraph speak for themselves, and the legal conclusions concerning

1 those statutes do not require a response. Proposed Intervenors lack sufficient
2 information to admit or deny the remaining allegations in this paragraph.

3 25. Proposed Intervenors admit that the Department of Education, through its Office for
4 Civil Rights, has been the primary federal agency charged with enforcing Title IX
5 administratively. The remaining allegations in this paragraph are legal conclusions
6 that do not require a response.

7 26. Proposed Intervenors admit that the cited documents were issued by the Department.
8 Those documents speak for themselves, and the legal conclusions in this paragraph
9 do not require a response.

10 27. The Department's guidance documents speak for themselves, and the legal
11 conclusions in this paragraph do not require a response.

12 28. The Department's guidance documents speak for themselves, and the legal
13 conclusions in this paragraph do not require a response.

14 29. The Department's guidance documents speak for themselves, and the legal
15 conclusions in this paragraph do not require a response.

16 30. The Department's guidance documents speak for themselves, and the legal
17 conclusions in this paragraph do not require a response.

18 31. The Department's guidance documents speak for themselves, and the legal
19 conclusions in this paragraph do not require a response.

20 32. This paragraph contains legal conclusions that do not require a response. To the
21 extent this paragraph includes factual allegations, Proposed Intervenors do not have
22 sufficient information to admit or deny those allegations.

23 33. This paragraph consists of legal conclusions that do not require a response and the
24 cited legal authorities that speak for themselves.

25 34. The Department's regulations speak for themselves. Proposed Intervenor lacks
26 sufficient information to admit or deny any remaining allegations in this paragraph.

27 35. The Department's regulations speak for themselves, and Proposed Intervenor lacks
28 sufficient information to admit or deny any remaining allegations in this paragraph.

- 1 36. This paragraph consists of legal conclusions that do not require a response, and the
2 cited legal authorities speak for themselves.
- 3 37. This paragraph consists of legal conclusions that do not require a response, and the
4 cited legal authorities speak for themselves.
- 5 38. This paragraph consists of legal conclusions that do not require a response, and the
6 cited legal authorities speak for themselves.
- 7 39. This paragraph consists of legal conclusions that do not require a response or cited
8 laws that speak for themselves. To the extent this paragraph is deemed to include
9 factual allegations, they are denied.
- 10 40. This paragraph consists of legal conclusions that do not require a response, and the
11 cited legal authorities speak for themselves.
- 12 41. This paragraph consists of legal conclusions that do not require a response, and the
13 cited legal authorities speak for themselves.
- 14 42. This paragraph consists of legal conclusions that do not require a response, and the
15 cited legal authorities speak for themselves. Proposed Intervenor lack sufficient
16 information to admit or deny any remaining allegations in this paragraph.
- 17 43. This paragraph consists of legal conclusions that do not require a response, and the
18 cited legal authorities speak for themselves. Proposed Intervenor lack sufficient
19 information to admit or deny any remaining allegations in this paragraph.
- 20 44. This paragraph consists of legal conclusions that do not require a response, and the
21 cited legal authorities speak for themselves.
- 22 45. The Department’s regulations speak for themselves, and the legal conclusions in this
23 paragraph do not require a response. Proposed Intervenor lack sufficient information
24 to admit or deny any remaining allegations in this paragraph.
- 25 46. This paragraph consists of legal conclusions that do not require a response, and the
26 cited legal authorities that speak for themselves.
- 27 47. The Department’s regulations speak for themselves, and this paragraph’s legal
28 conclusions do not require a response.

- 1 48. The Department’s regulations speak for themselves, and this paragraph’s legal
2 conclusions do not require a response.
- 3 49. This paragraph consists of legal conclusions that do not require a response, and the
4 cited legal authorities speak for themselves.
- 5 50. This paragraph consists of legal conclusions that do not require a response, and the
6 cited legal authorities speak for themselves.
- 7 51. This paragraph consists of legal conclusions that do not require a response, and the
8 cited legal authorities speak for themselves. Proposed Intervenors lack sufficient
9 information to admit or deny any remaining allegations in this paragraph.
- 10 52. This paragraph consists of legal conclusions that do not require a response, and the
11 cited legal authorities speak for themselves. Proposed Intervenors lack sufficient
12 information to admit or deny any remaining allegations in this paragraph.
- 13 53. Proposed Intervenors lack sufficient information to admit or deny the allegations in
14 this paragraph.
- 15 54. This paragraph consists of legal conclusions that do not require a response, and the
16 cited legal authorities speak for themselves.
- 17 55. This paragraph consists of legal conclusions that do not require a response, and the
18 cited legal authorities speak for themselves.
- 19 56. The Department’s regulations speak for themselves, and this paragraph’s legal
20 conclusions do not require a response.
- 21 57. This paragraph consists of legal conclusions that do not require a response, and the
22 cited legal authorities speak for themselves.
- 23 58. The factual allegations in this paragraph are denied. This paragraph also includes
24 legal conclusions that do not require a response.
- 25 59. This paragraph consists of legal conclusions that do not require a response, and the
26 cited legal authorities speak for themselves.
- 27 60. The Department’s regulations speak for themselves, and this paragraph’s legal
28 conclusions do not require a response.

- 1 61. This paragraph consists of legal conclusions that do not require a response, and the
2 cited legal authorities speak for themselves.
- 3 62. The Department’s regulations speak for themselves, and this paragraph’s legal
4 conclusions do not require a response.
- 5 63. Proposed Intervenors lack sufficient information to admit or deny the allegations in
6 this paragraph.
- 7 64. This paragraph consists of legal conclusions that do not require a response, and the
8 cited legal authorities speak for themselves. Proposed Intervenors lack sufficient
9 information to admit or deny the remaining allegations in this paragraph.
- 10 65. Admit that Title IX regulations were adopted in 1975. This paragraph consists of
11 legal conclusions that do not require a response, and the cited legal authorities speak
12 for themselves. Proposed Intervenors lack sufficient information to admit or deny the
13 remaining allegations in this paragraph.
- 14 66. Admit that the cited document was issued by the Office of civil Rights. That
15 document speaks for itself. The legal conclusions in this paragraph do not require a
16 response.
- 17 67. The Department’s regulations speak for themselves. Proposed Intervenors lack
18 sufficient information to admit or deny the remaining allegations in this paragraph.
- 19 68. The Department of Justice document cited in this paragraph speaks for itself. The
20 legal conclusions in this paragraph do not require a response.
- 21 69. The cited manual speaks for itself.
- 22 70. The documents cited in this paragraph speak for themselves. The legal conclusions in
23 this paragraph do not require a response.
- 24 71. The Department’s regulation speaks for itself. The legal conclusions in this paragraph
25 do not require a response.
- 26 72. The Case Processing Manual speaks for itself. The legal conclusions in this paragraph
27 do not require a response. Proposed Intervenors lack sufficient information to admit
28 or deny the remaining allegations in this paragraph.

1 73. The regulations cited in this paragraph speak for themselves. The Case Processing
2 Manual speaks for itself. The legal conclusions in this paragraph do not require a
3 response.

4 74. The regulations cited in this paragraph speak for themselves. The Case Processing
5 Manual speaks for itself. The legal conclusions in this paragraph do not require a
6 response.

7 75. Proposed Intervenors lack sufficient information to admit or deny the allegations in
8 this paragraph.

9 76. Proposed Intervenors lack sufficient information to respond to the allegations about
10 Plaintiff The Women's Student Union.

11 77. Proposed Intervenors lack sufficient information to respond to the allegations about
12 the members of Plaintiff The Women's Student Union.

13 78. Proposed Intervenors lack sufficient information to respond to the allegations about
14 Plaintiff The Women's Student Union's mission.

15 79. Proposed Intervenors lack sufficient information to respond to the allegations about
16 the mission and activities of Plaintiff The Women's Student Union.

17 80. Proposed Intervenors lack sufficient information to admit or deny the allegations in
18 this paragraph.

19 81. Proposed Intervenors lack sufficient information to admit or deny the allegations in
20 this paragraph. The article cited in this paragraph speaks for itself.

21 82. Proposed Intervenors lack sufficient information to admit or deny the allegations in
22 this paragraph. The article cited in this paragraph speaks for itself.

23 83. Proposed Intervenors lack sufficient information to admit or deny the allegations in
24 this paragraph. The articles cited in this paragraph speaks for themselves.

25 84. Proposed Intervenors lack sufficient information to admit or deny the allegations in
26 this paragraph.

27 85. Proposed Intervenors lack sufficient information to admit or deny the factual
28 allegations in this paragraph. The article cited in this paragraph speaks for itself.

- 1 86. The paragraph contains legal conclusions that do not require a response. Proposed
2 Intervenor lack sufficient information to admit or deny any factual allegations in this
3 paragraph.
- 4 87. The paragraph contains a legal conclusion that does not require a response.
- 5 88. Proposed Intervenor lack sufficient information to admit or deny the factual
6 allegations in this paragraph. The paragraph contains legal conclusions that do not
7 require a response.
- 8 89. Proposed Intervenor lack sufficient information to admit or deny the factual
9 allegations in this paragraph. The Department's regulations speak for themselves.
10 The paragraph contains legal conclusions that do not require a response.
- 11 90. Proposed Intervenor lack sufficient information to admit or deny the factual
12 allegations in this paragraph.
- 13 91. Proposed Intervenor lack sufficient information to admit or deny the factual
14 allegations in this paragraph.
- 15 92. Proposed Intervenor lack sufficient information to admit or deny the factual
16 allegations in this paragraph. The paragraph contains legal conclusions that do not
17 require a response.
- 18 93. Proposed Intervenor lack sufficient information to admit or deny the factual
19 allegations in this paragraph.
- 20 94. The Department's regulation speaks for itself. The paragraph contains legal
21 conclusions that do not require a response.
- 22 95. This paragraph consists of legal conclusions that do not require a response, and the
23 cited Letter of Dismissal speaks for itself. Proposed Intervenor lack sufficient
24 information to admit or deny any remaining allegations in this paragraph.
- 25 96. Proposed Intervenor lack sufficient information to admit or deny the factual
26 allegations in this paragraph.
- 27 97. Proposed Intervenor lack sufficient information to admit or deny the factual
28 allegations in this paragraph. The paragraph contains legal conclusions that do not

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

require a response. The cited Guidance document speaks for itself.

98. Proposed Intervenor lack sufficient information to admit or deny the factual allegations in this paragraph. The paragraph contains legal conclusions that do not require a response.

99. Proposed Intervenor lack sufficient information to admit or deny the factual allegations in this paragraph. The paragraph contains legal conclusions that do not require a response.

100. The paragraph contains legal conclusions that do not require a response. The cited Guidance document speaks for itself. Proposed Intervenor lack sufficient information to admit or deny the factual allegations in this paragraph.

101. The paragraph contains legal conclusions that do not require a response. The Department's regulations speak for themselves.

102. The paragraph contains legal conclusions that do not require a response. Proposed Intervenor lack sufficient information to admit or deny the factual allegations in this paragraph.

103. The paragraph contains legal conclusions that do not require a response. The Department's regulation speaks for itself. Proposed Intervenor lack sufficient information to admit or deny the remaining allegations in this paragraph.

104. Intervenor lack sufficient information to admit or deny the allegations in this paragraph.

105. Proposed Intervenor lack sufficient information to admit the factual allegations in this paragraph. The paragraph contains a legal conclusion that does not require a response.

106. The Department's Regulations speak for themselves, and the legal conclusions in this paragraph do not require a response. Proposed Intervenor lack sufficient information to admit or deny the remaining allegations in this paragraph.

107. Proposed Intervenor lack sufficient information to admit or deny the allegations in this paragraph.

1 108. Proposed Intervenors lack sufficient information to admit or deny the allegations in
2 this paragraph.

3 109. Proposed Intervenors lack sufficient information to admit or deny the allegations in
4 this paragraph.

5 110. Proposed Intervenors lack sufficient information to admit or deny the allegations in
6 this paragraph.

7 111. Proposed Intervenors lack sufficient information to admit or deny the allegations in
8 this paragraph.

9 112. Proposed Intervenors lack sufficient information to admit or deny the allegations in
10 this paragraph.

11 113. Proposed Intervenors lack sufficient information to admit or deny the allegations in
12 this paragraph.

13 114. The Annual Report cited in this paragraph speaks for itself. The Department's
14 regulations speak for themselves. Proposed Intervenors lack sufficient information to
15 admit or deny the remaining allegations in this paragraph.

16 115. The Department's Regulations speak for themselves, and the legal conclusions in this
17 paragraph do not require a response.

18 116. The paragraph contains legal conclusions that do not require a response. Proposed
19 Intervenors lack sufficient information to admit or deny any remaining allegations in
20 this paragraph.

21 117. The paragraph contains legal conclusions that do not require a response.

22 118. The paragraph contains legal conclusions that do not require a response. Proposed
23 Intervenors lack sufficient information to admit or deny any remaining allegations in
24 this paragraph.

25 119. The paragraph contains legal conclusions that do not require a response. Proposed
26 Intervenors lack sufficient information to admit or deny any remaining allegations in
27 this paragraph.

28 120. The paragraph contains legal conclusions that do not require a response. Proposed

1 Intervenor lack sufficient information to admit or deny any remaining allegations in
2 this paragraph.

3 121. Proposed Intervenor admit that the Rule supersedes earlier Department guidance on
4 Title IX. To the extent that this paragraph contains other allegations that could be
5 characterized as factual in nature, they are denied.

6 122. The Department’s Regulations speak for themselves, and this paragraph contains
7 legal conclusions that do not require a response.

8 123. The Department’s Regulations speak for themselves, and this paragraph contains
9 legal conclusions that do not require a response. Proposed Intervenor lack sufficient
10 information to admit or deny the remaining allegations in this paragraph.

11 124. The Department’s Regulations speak for themselves, and this paragraph contains
12 legal conclusions that do not require a response. Proposed Intervenor lack sufficient
13 information to admit or deny the remaining allegations in this paragraph.

14 125. The Department’s Regulations speak for themselves, and this paragraph contains
15 legal conclusions that do not require a response.

16 126. Proposed Intervenor lack sufficient information to admit or deny the allegations in
17 this paragraph.

18 127. This paragraph consists of legal conclusions that do not require a response, and the
19 cited legal authorities speak for themselves. Proposed Intervenor lack sufficient
20 information to admit or deny any remaining allegations in this paragraph.

21 128. Proposed Intervenor incorporate and restate their prior responses.

22 129. This paragraph consists of legal conclusions that do not require a response, and the
23 cited legal authorities speak for themselves.

24 130. This paragraph consists of legal conclusions that do not require a response, and the
25 cited legal authorities speak for themselves. Proposed Intervenor otherwise deny the
26 characterizations in this paragraph.

27 131. This paragraph consists of legal conclusions that do not require a response, and the
28 cited legal authorities speak for themselves. Proposed Intervenor otherwise deny the

1 characterizations in this paragraph.

2 132. This paragraph consists of legal conclusions that do not require a response, and the
3 cited legal authorities speak for themselves. Proposed Intervenor otherwise denies
4 the characterizations in this paragraph.

5 133. This paragraph consists of legal conclusions that do not require a response, and the
6 cited legal authorities speak for themselves.

7 134. This paragraph consists of legal conclusions that do not require a response, and the
8 cited legal authorities speak for themselves. Proposed Intervenor otherwise denies
9 the characterizations in this paragraph.

10 135. The paragraphs on page 32 of the complaint under “PRAYER FOR RELIEF” consist
11 of a prayer for relief that does not require an answer. To the extent a response is
12 required, Proposed Intervenor deny that Plaintiff is entitled to the relief described.

13 136. Proposed Intervenor deny each and every allegation not expressly admitted herein.

14 Dated: November 3, 2021

Respectfully submitted,

15 /s/ Bradley A. Benbrook

/s/ Bryan K. Weir

16
17 Bradley A. Benbrook (CA Bar. #177768)
Stephen M. Duvernay (CA Bar. #250957)
18 BENBROOK LAW GROUP, PC
400 Capitol Mall, Suite 2530
19 Sacramento, CA 95814
(916)447-4900
brad@benbrooklawgroup.com
20 steve@benbrooklawgroup.com
Counsel for all Proposed Intervenor

William S. Consovoy*
Bryan K. Weir (CA Bar. #310964)
Cameron T. Norris*
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
will@consovoymccarthy.com
bryan@consovoymccarthy.com
cam@consovoymccarthy.com

21 /s/ Charles J. Cooper

*Counsel for Speech First, Inc. and
Independent Women’s Law Center*

22
23 Charles J. Cooper*
Brian W. Barnes*
COOPER & KIRK, PLLC
24 1523 New Hampshire Ave., NW
Washington, D.C. 20036
25 (202) 220-9600
ccooper@cooperkirk.com
26 bbarnes@cooperkirk.com

27 *Counsel for Foundation for
Individual Rights in Education*
28 *Admitted Pro Hac Vice

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28